



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Economy Rental and Leasing, Inc., d/b/a Goben  
Cars

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Case No. TR-01-0020

**FINAL DECISION**

On January 23, 2001, LaWanda Wilson filed a claim against the surety bond of Economy Rental and Leasing, Inc., d/b/a Goben Cars (the Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in the Wisconsin State Journal a newspaper published in Madison, Wisconsin on June 7, 2001. The notice informed other persons who may have claims against Economy Rental and Leasing, Inc., d/b/a Goben Cars to file them with the Department of Transportation by August 6, 2001. No additional claims were filed.

Ms. Wilson's claim along with documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals. A Preliminary Determination based on the documentation contained in the file and required by Wis. Admin. Code, § Trans 140.26(4)(a) was issued on September 20, 2000. On November 2, 2001, the Dealer filed an objection to the Preliminary Determination pursuant to Wis. Admin. Code § Trans 140.26(5)(b). Pursuant to due notice a hearing under Wis. Admin. Code § Trans 140.26(6) was conducted in this matter on November 26, 2001, in Madison, Wisconsin, Mark J. Kaiser, Administrative Law Judge, presiding.

In accordance with Wis. Stats. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

LaWanda Wilson  
2535 Hord Street  
St. Louis, MO 63136

Economy Rental and Leasing, Inc., d/b/a Goben Cars  
c/o Kristie L. Goben  
107 Wright Road, #3  
Johnson Creek, WI 53038

Capitol Indemnity Corporation  
P. O. Box 5900  
Madison, WI 53705

The Preliminary Determination issued in this matter found that the Dealer had violated Wis. Stat. § 342.15 and awarded La Wanda Wilson \$4,300.00. The amount of the award represented the value of her trade-in as shown on the purchase contract. The evidence presented at the hearing indicates that LaWanda Wilson attempted to purchase a 1998 Dodge Intrepid from the Dealer but was unable to obtain financing to purchase the vehicle. The vehicle was then sold to her friend Virginia Draper using Ms. Wilson's 1989 Chevy Cavalier as a trade-in. Ms. Wilson alleges that Ms. Draper was brought into the transaction as a cosigner; however, all the documents, including an insurance policy obtained by Ms. Wilson, list Ms. Draper as the purchaser of the vehicle. Apparently, the plan was to purchase the vehicle in Ms. Draper's name for Ms. Wilson's use. Ms. Wilson made the payments on the loan, presumably, with the intent to have the vehicle transferred to her name at some point. The extent of the Dealer awareness and/or complicity in the plan is not clear.

The Dealer did use Ms. Wilson's 1989 Chevy Cavalier as a trade-in for the vehicle that was purchased in Ms. Draper's name. Ostensibly Ms. Wilson transferred the vehicle to Ms. Draper to use as a trade-in. However, title to the vehicle was never transferred to Ms. Draper's name. If Ms. Wilson actually gave or sold her vehicle to Ms. Draper to use as a trade-in, title to the 1989 Chevy Cavalier vehicle should have been transferred to her name. The Department of Transportation refers to the practice of skipping a transfer between owners of a vehicle as "title jumping." However, nothing prohibits a Dealer from accepting a trade-in that is not owned by the prospective purchaser. The Dealer was undoubtedly aware that Ms. Draper was purchasing the vehicle for Ms. Wilson because Ms. Wilson was unable to secure financing for the vehicle. This is questionable business practice; however, it does not appear to be unlawful.

The transaction went sour because of two subsequent events. One event is that Ms. Wilson experienced multiple mechanical problems with the vehicle and was frustrated by the Dealer in having repairs done under the warranty provided by the Dealer (it is not clear if the problems using the warranty resulted from the fact that the vehicle was not titled in Ms. Wilson's name or the fact that the Dealer moved its dealership to Milwaukee shortly after the transaction). The other subsequent event is that Ms. Draper filed a bankruptcy petition and her attorney advised her to surrender the vehicle to the loan company and get her name off the loan. The problems with the vehicle undoubtedly motivated Ms. Wilson to want to rid herself of the vehicle. However, the factor that resulted in the loss of the vehicle was Ms. Draper's voluntary surrender of the vehicle to the loan company. The transaction in this case was clearly unorthodox. However, there is no apparent violation of any statute or regulation related to the sale or purchase of a motor vehicle. Further investigation may discover a violation related to Ms. Wilson's inability to get the Dealer to honor the warranty. However, at this time there is no basis to make any award on such a basis.

Based on the evidence presented at the hearing, Ms. Wilson's loss was not the result of an act that would be the basis of the suspension or revocation of the Dealer's motor vehicle dealer license. Accordingly, the Preliminary Determination is reversed and Ms. Wilson's claim is denied. Although the claim is denied and it is no longer necessary to determine the amount of Ms. Wilson's loss, it should be noted that Ms. Wilson's loss was actually substantially less than the amount allowed in the Preliminary Determination. The Preliminary Determination found the amount of her loss was \$4,300, the amount of the trade-in allowance. The Dealer actually only intended \$300.00 as a trade-in allowance. The remainder of the listed trade-in allowance was a discount on the sale price of the purchased vehicle. The inflation of a trade-in allowance in order to boost a purchaser's apparent equity in a purchased vehicle is contrary to Department of Transportation directives; however, Ms. Wilson admitted at the hearing that her 1989 Chevy Cavalier was only valued at \$300.00. Accordingly, Ms. Wilson's loss was substantially less than found in the Preliminary Determination. The Final Decision modifies the Preliminary Determination consistent with the evidence presented at the hearing.

### Findings of Fact

1. Economy Rental and Leasing, Inc., d/b/a Goben Cars (the Dealer) was licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities were located at 2424 South Stoughton Road, Madison, Wisconsin. The Dealer is no longer in business.

2. The Dealer had a bond satisfying the requirements of Wis. Stat. § 218.0114(5)(a) in force from January 1, 1994 (bond #579225A from Capitol Indemnity Corporation, Madison, Wisconsin).

3. On March 30, 2000 at 11:20 a.m., LaWanda Wilson executed a purchase contract to purchase a 1998 Dodge Intrepid, vehicle identification number 2B3HD46R7WH160760. According to the purchase contract, the retail price of the purchased vehicle was \$16,995.00. Ms. Wilson intended to trade in her 1989 Chevy Cavalier as part of the transaction. According to the purchase contract, the Dealer allowed Ms. Wilson \$4,300.00 for her trade-in. However, \$4,000 of the trade-in allowance was actually an advertised discount on the purchased vehicle. At the hearing, Ms. Wilson testified that she paid \$1400.00 for the 1989 Chevy Cavalier in 1997. Ms. Wilson conceded that her 1989 Chevy Cavalier was worth approximately \$300.00 at the time of the trade-in.

4. In a complaint she filed with the Department of Transportation on June 8, 2000, Ms. Wilson indicates that the Dealer told her she would need a co-signer for a car loan. Ms. Wilson asked Virginia Draper, a friend, to co-sign a loan for her. Ms. Draper agreed to co-sign for the loan. A second purchase contract dated March 30, 2000, at 12:45 p.m. was executed. This purchase contract lists Virginia Draper as the purchaser of the 1998 Dodge Intrepid.

5. The second purchase contract lists a 1998 Dodge Intrepid with the same vehicle identification number as the vehicle purchased by Ms. Wilson. The second purchase contract also lists a 1989 Chevy Cavalier, vehicle identification number 1G1JC5112K7244199, as the

trade-in. According to the Department of Transportation records this vehicle was registered in the name of LaWanda Wilson. The application for title and registration (MV-11), the loan documents, and the used vehicle warranty all list Virginia Draper as the purchaser of the 1998 Dodge Intrepid. According to Ms. Wilson, she and Ms. Draper made several attempts to have the title and registration of the 1998 Dodge Intrepid transferred to her name. The efforts were unsuccessful. Ms. Draper subsequently surrendered possession of the vehicle to the loan company, Arcadia Financial Ltd.

6. On January 23, 2001, LaWanda Wilson filed a claim against the surety bond of the Dealer. The claim is in the amount of \$4,818.90 and is itemized as \$4,300.00, the trade-in allowance for her 1989 Chevy Cavalier; \$317.18 for one car payment made on the loan to purchase the 1998 Dodge Intrepid, and a total of \$201.72 for insurance.

7. In her complaint, Ms. Wilson alleged that the intent was that Virginia Draper be a co-signer for the purchase of the 1998 Dodge Intrepid. The second purchase contract and all the other documents clearly list Virginia Draper as the sole purchaser of the 1998 Dodge Intrepid. It is not clear from the documents in the file whether any fraud was committed as part of this transaction and, if so, who committed the fraud. However, as a result of this transaction, a 1989 Chevy Cavalier owned by Ms. Wilson was used as a trade-in for a vehicle purchased by Ms. Draper.

The Dealer apparently accepted as a trade-in for the 1998 Dodge Intrepid nominally purchased by Virginia Draper a 1989 Chevy Cavalier titled in the name of LaWanda Wilson. The Dealer's acceptance of a trade-in that belonged to someone other than the person who purchased a vehicle from the Dealer constitutes a practice labeled by the Department of Transportation as "title jumping." According to the Dealer, the intent of the prohibition against title jumping is to collect sales tax on all taxable transactions and to generate a complete title history for all vehicles. Undoubtedly another purpose is as an anti-theft protection. The Department of Transportation cites title jumping as a violation of Wis. Stat. § 342.15. Wis. Stat. chapter 342 is titled "Vehicle Title and Anti-Theft Law."

Although the Dealer committed a violation of what the Department of Transportation labels "title jumping," there is no express prohibition against a dealer accepting as a trade-in a vehicle titled in the name of someone other than the prospective purchaser. In this case Ms. Wilson is not alleging that Ms. Draper traded in her 1989 Chevy Cavalier without her knowledge or permission. Rather, as discussed above, the apparent intent was for Ms. Draper to purchase the 1998 Dodge Intrepid for Ms. Wilson's benefit.

8. The bond claim was filed within three years of the ending date of the one-year period the bond issued by the Capital Indemnity Corporation was in effect and is, therefore, a timely claim.

9. LaWanda Wilson submitted documentation showing she sustained a loss in the amount of \$300.00, the trade-in allowance for her 1989 Chevy Cavalier. However, she has not shown that this loss was the result of an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license. Accordingly, the bond claim must be denied.

### Conclusions of Law

1. LaWanda Wilson's claim arose on March 30, 2000, the day Economy Rental and Leasing, Inc., d/b/a Goblen Cars accepted as a trade-in her 1989 Chevy Cavalier for a 1998 Dodge Intrepid purchased by Virginia Draper. The surety bond issued to Economy Rental and Leasing, Inc., d/b/a Goblen Cars covers a one-year period commencing on January 1, 2000. The claim arose during the period covered by the surety bond.

2. LaWanda Wilson filed a claim against the motor vehicle dealer bond of Economy Rental and Leasing, Inc., d/b/a Goblen Cars on January 23, 2001. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. LaWanda Wilson's loss was not caused by an act of Economy Rental and Leasing, Inc., d/b/a Goblen Cars that would be grounds for suspension or revocation of its motor vehicle dealer license. Pursuant to Wis. Admin. Code § 140.21(2)(c), this claim is not allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

### Order

The claim filed by LaWanda Wilson against the motor vehicle dealer bond of Economy Rental and Leasing, Inc., d/b/a Goblen Cars is DENIED.

Dated at Madison, Wisconsin on January 2, 2002.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

**NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53 to insure strict compliance with all its requirements.